# \*\*DRONES AFF – HS JUNIOR VARSITY\*\*

### Table of Contents (1/2)

[Table of Contents 2](#_Toc427652375)

[Summary 4](#_Toc427652376)

[Glossary 5](#_Toc427652377)-7

**First affirmative constructive & Add-On Advantages:**

[1AC 8](#_Toc427652380)-13

[Drone Integration Add-On Advantage 14](#_Toc427652386)-16

**Answers to negative on-case arguments:**

[Answers to: Economic decline doesn’t cause war 17](#_Toc427652389)

[Answers to: Economy is resilient 18](#_Toc427652390)

[Answers to: Local agencies will still use drones 19](#_Toc427652391)

[Answers to: Government agencies won’t abuse drones 20](#_Toc427652392)

[Answers to: Surveillance only impact criminals 21](#_Toc427652393)

[Answers to: Drones won’t violate privacy 22](#_Toc427652394)

[Answers to: Warrants won’t stop government abuse of drones 23](#_Toc427652395)

[Answers to: Drones create government accountability 24](#_Toc427652396)

[Answers to: Drones are key to public safety 25](#_Toc427652397)

**Answers to Terrorism Disadvantage:**

[Drones are ineffective 26](#_Toc427652398)

[Mass surveillance hurts counter-terrorism efforts 27](#_Toc427652399)

[Mass surveillance hurts counter-terrorism efforts 28](#_Toc427652400)

[Drones can be hacked 29](#_Toc427652401)

[Nuclear terrorism won’t happen 30](#_Toc427652402)

[Nuclear terrorism won’t happen 31](#_Toc427652403)

[Terrorism threats are inflated 32](#_Toc427652404)

[Terrorism threats are inflated 33](#_Toc427652405)

### Table of Contents (2/2)

**Answers to Presidential Powers Disadvantage:**

[Restrictions on presidential powers are inevitable 34](#_Toc427652406)

[Balance of powers better than presidential powers 35](#_Toc427652407)

[Presidential powers bad – National security 36](#_Toc427652408)

[Presidential powers bad – Dictatorship 37](#_Toc427652409)

[Answers to: Credibility Add-on 38](#_Toc427652410)

[Answers to: Credibility Add-on 39](#_Toc427652411)

**Answers to Executive Order Counterplan:**

[Perm (Congress and Executive should act together) 40](#_Toc427652412)

[Answers to: Perm links to presidential powers net benefit 41](#_Toc427652413)

[Executive Action Fails – Accountability 42](#_Toc427652414)

[Executive Action Fails – Circumvention 43](#_Toc427652415)

[Executive Action Fails – Rollback 44](#_Toc427652416)

[Executive Action Fails – Rollback 45](#_Toc427652417)

[Executive Action Fails - Transparency 46](#_Toc427652418)

### Summary

#### The Drone Surveillance case discusses a method of restricting the amount and type of data that can be collected by the government. Drones have been used for both surveillance and defense purposes for more than a decade and are rapidly becoming prominent in the United States. Law enforcement agencies in particular are considering using drones as a method or surveillance, but there is some public fear that they may become weaponized. Current regulations around drones are vague, and while some limits have been set, many are not enforceable or allow law enforcement officials to extend the limit if they determine it is necessary.

#### The problem that is highlighted in the Affirmative case is that drones have an enhanced capability to eliminate the privacy of the general public. Drones can be used from great distances for round-theclock surveillance. Furthermore, this type of surveillance is not protected against by the federal government. While the government does protect its citizens against unreasonable search and seizure with the Fourth Amendment of the Constitution, there are no current legal precedents that define the usage of drones as a “search.” While many people think that privacy is a fundamental right, the Constitution does not protect our right to privacy from drones in any way.

#### The plan suggests that the federal government require law enforcement agencies to apply for a warrant before flying a drone mission. This plan will solve the privacy issue by giving the public rights against certain types of searches and creating a legal precedent to defend themselves in court. Adequate protection of privacy will set precedents for future protection against drones and other excessive law enforcement techniques.

#### Remember – this file gives you evidence for your speech. You shouldn’t simply read every piece of evidence in this file in your debates – you should spend time in your speech comparing your evidence to the other teams and spinning a story about why the plan is essential to improve the world (using this evidence to back up your claims). Good luck!

### Glossary (1/3)

**4th amendment**

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no Warrants shall issue but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

**Customs and Border Protection (CBP)**

Customs and Border Protection (CBP) is the largest federal law enforcement agency of the United States Department of Homeland Security charged with regulating and facilitating international trade, collecting import duties, and enforcing U.S. regulations, including trade, customs, and immigration.

**Department of Homeland Security (DHS)**

The United States Department of Homeland Security (DHS) is a cabinet department of the United States federal government, created in response to the September 11 attacks, and with the primary responsibilities of protecting the territory of the United States and protectorates from and responding to terrorist attacks, man‐made accidents, and natural disasters. In fiscal year 2011 it was allocated a budget of $98.8 billion and spent, net, $66.4 billion.

**Drug Enforcement Administration (DEA)**

The Drug Enforcement Administration (DEA) is a United States federal law enforcement agency under the U.S. Department of Justice, tasked with combating drug smuggling and use within the United States. Not only is the DEA the lead agency for domestic enforcement of the Controlled Substances Act, sharing concurrent jurisdiction with the Federal Bureau of Investigation (FBI) and Immigration and Customs Enforcement (ICE), it also has sole responsibility for coordinating and pursuing U.S. drug investigations abroad.

**Federal Bureau of Investigation (FBI)**

The Federal Bureau of Investigation (FBI) is the domestic intelligence and security service of the

United States, which simultaneously serves as the nation's prime Federal law enforcement

organization. Operating under the jurisdiction of the U.S. Department of Justice, FBI is concurrently

a member of the U.S. Intelligence Community and reports to both the Attorney General and the

Director of National Intelligence. A lead U.S. counterterrorism, counterintelligence, and criminal

investigative organization, FBI has jurisdiction over violations of more than 200 categories of

federal crime.

**Foreign Intelligence Surveillance Act**

The original version of this law, passed in 1978, set out the conditions under which a special court would authorise electronic surveillance if people were believed to be engaged in espionage or planning an attack against the US on behalf of a foreign power. Following the 9/11 attacks, the Bush administration secretly gave the NSA permission to bypass the court and carry out warrantless surveillance of al‐Qaeda suspects, among others. After this emerged in 2005, Congress voted to both offer immunity to the firms that had co‐operated with the NSA's requests and to make amendments to Fisa. The relaxation to the rules, introduced in 2008, meant officials could now obtain court orders without having to identify each individual target or detail the specific types of communications they intended to monitor so long as they convinced the court their purpose was to gather "foreign intelligence information". In addition, they no longer had to confirm both the sender and receiver of

### Glossary (2/3)

**Foreign Intelligence Surveillance Act (continued)**

the messages were outside the US, but only had to show it was "reasonable" to believe one of the parties was outside the country.

**Freedom of Information Act (FOIA)**

The Freedom of Information Act (FOIA), 5 U.S.C. § 552, is a federal freedom of information law that allows for the full or partial disclosure of previously unreleased information and documents controlled by the United States government. The Act defines agency records subject to disclosure, outlines mandatory disclosure procedures and grants nine exemptions to the statute.

**Federal Aviation Administration (FAA)**

The Federal Aviation Administration (FAA) is the national aviation authority of the United States. An agency of the United States Department of Transportation, it has authority to regulate and oversee all aspects of American civil aviation.

**Judiciary**

The judiciary (also known as the judicial system or court system) is the system of courts that interprets and applies the law in the name of the state. The judiciary also provides a mechanism for the resolution of disputes. Under the doctrine of the separation of powers, the judiciary generally does not make law (that is, in a plenary fashion, which is the responsibility of the legislature) or enforce law (which is the responsibility of the executive), but rather interprets law and applies it to the facts of each case. This branch of the state is often tasked with ensuring equal justice under law. It usually consists of a court of final appeal (called the "Supreme court" or "Constitutional court"), together with lower courts.

**National Security Agency (NSA**)

The US government agency tasked with gathering intelligence for the country's government and military leaders, and preventing foreign adversaries from gaining access to classified national security information.

**Panopticon**

A conceptual prison imagined by Jeremy Bentham in the late 18th century. Panopticon is a circular prison where the cells are located around the circumference and a guard tower is located in the middle of all the cells. Inside of the cells, the prisoners can only see the inside of the cell room, nothing on the outside, while the guard is able to see everything that the prisoners are doing. The idea behind panopticon can be reduced to self‐policing. The prisoners assume they are in a permanent state of visibility so, regardless if a guard is actually watching or not, the prisoner will behave on their own because they think they are being watched.

**Privacy**

Legal scholars use the term “privacy” to mean at least four kinds of legal rules governing (1) invasions into protected spaces, relationships, or decisions; (2) collection of information, (3) use of information, and (4) disclosure of information.

### Glossary (3/3)

**Probable Cause**

A requirement found in the Fourth Amendment that must usually be met before police make an arrest, conduct a search, or receive a warrant. Courts usually find probable cause when there is a reasonable basis for believing that a crime may have been committed (for an arrest) or when evidence of the crime is present in the place to be searched (for a search). Under exigent circumstances, probable cause can also justify a warrantless search or seizure. Persons arrested without a warrant are required to be brought before a competent authority shortly after the arrest for a prompt judicial determination of probable cause.

**Search Warrant**

A search warrant is a warrant issued by the competent authority authorizing a police officer to search a specified place for evidence even without the occupant’s consent. A search warrant is generally required to validate a Fourth Amendment search, subject to a few exceptions.

**Surveillance**

The systematic observation of aerospace, surface, or subsurface areas, places, persons, or things, by visual, aural, electronic, photographic, or other means.

**Totalitarian**

Totalitarianism is a political system in which the state holds total authority over the society and seeks to control all aspects of public and private life wherever possible.

**Unmanned Aerial Vehicle (UAV)**

An aircraft with no pilot on board. UAVs can be remote controlled aircraft (e.g. flown by a pilot at a ground control station) or can fly autonomously based on pre‐programmed flight plans or more complex dynamic automation systems.

**Unmanned Aerial System (UAS)**

A term that is frequently used in conjunction with UAV’s. UAS is a broad term used to describe unmanned communication systems that require staff members for control. Moreso, it is a term that includes drones that must be operated and controlled by a person such as Remotely Piloted Aircrafts (RPA’s).

### 1AC (1/6)

#### Contention One is Inherency:

#### Law enforcement agencies have developed fleets of drones – their use as a tool for mass surveillance will increase exponentially in the near future.

Barry, senior policy analyst at Center for International Policy, 2013

(Tom, “Drones Over Homeland,” April 23, *CIP*, Online: <http://www.ciponline.org/research/html/drones-over-the-homeland>)

Drones are proliferating at home and abroad. A new high-tech realm is emerging, where remotely controlled and autonomous unmanned systems do our bidding. Unmanned Aerial Vehicles (UAVs) and Unmanned Aerial Systems (UAS) – commonly known as drones – are already working for us in many ways. This new CIP International Policy Report reveals how the military-industrial complex and the emergence of the homeland security apparatus have put border drones at the forefront of the intensifying public debate about the proper role of drones domestically. Drones Over the Homeland focuses on the deployment of drones by the Department of Homeland Security (DHS), which is developing a drone fleet that it projects will be capable of quickly responding to homeland security threats, national security threats and national emergencies across the entire nation. In addition, DHS says that its drone fleet is available to assist local law-enforcement agencies. Due to a surge in U.S. military contracting since 2001, the United States is the world leader in drone production and deployment. Other nations, especially China, are also rapidly gaining a larger market share of the international drone market. The United States, however, will remain the dominant driver in drone manufacturing and deployment for at least another decade. The central U.S. role in drone proliferation is the direct result of the Pentagon’s rapidly increasing expenditures for UAVs. Also fueling drone proliferation is UAV procurement by the Department of Homeland Security, by other federal agencies such as NASA, and by local police, as well as by individuals and corporations. Drones are also proliferating among state-level Air National Guard units. Despite its lead role in the proliferation of drones, the U.S. government has failed to take the lead in establishing appropriate regulatory frameworks and oversight processes. Without this necessary regulatory infrastructure – at both the national and international levels – drone proliferation threatens to undermine constitutional guarantees, civil liberties and international law.

### 1AC (2/6)

#### Regulations on drone use by government agencies only covers safety standards – there is NO oversight on how they are used, guaranteeing massive privacy violations.

O’Brien, Editor of Journal of Information Technology and Privacy Law, 2013

(Jennifer, “WARRANTLESS GOVERNMENT DRONE SURVEILLANCE: A CHALLENGE TO THE FOURTH AMENDMENT,” *The John Marshall Journal of Information Technology & Privacy Law*, 30:1, Online: http://repository.jmls.edu/cgi/viewcontent.cgi?article=1732&context=jitpl)

The next transition for drone technology will be public use by law enforcement.61 Drones are increasingly being used in a vast array of civilian and governmental situations.62 An example of a future law enforcement drone is AeroVironment’s “Qube,” already advertised as “targeting the needs of first responders.”63 Among the highlighted features of the Qube is its size,64 mobility,65 and advanced technology.66 Smaller drones, like the Qube, will cost significantly less than current police helicopters.67 In response to the growing interest in domestic drones, a need for the development of regulatory standards has been recognized.68 Since 1958 the FAA has been charged with ensuring the safe and efficient operation of aircraft in national airspace.69 Therefore, the FAA will regulate the operation of domestic drones since drones will be flown in the national airspace.70 Under current FAA policy, unmanned aircraft use is prohibited in the National Airspace System without specific FAA authorization.71 In light of increasing demand for drones and several safety concerns with drone operation in the national airspace, the FAA published guidelines for operating drones in 2007.72 These FAA guidelines distinguish between civil and public drone use.73 For civil drone use to be authorized, the operator must be issued a Special Airworthiness Certificate.74 The FAA presently only issues a Special Airworthiness Certificate for experimental uses. 75 An operator who has been issued an experimental certificate may not use a drone for “compensation or hire.”76 The FAA denotes law enforcement drone use as “public use.”77 For public operation of a drone, the law enforcement entity must be issued a Certification of Authorization or Waiver (“COA”).78 The COA outlines the limitations on the use of the drone.79 The operator of the drone must also meet certain FAA requirements.80 On February 14, 2012, President Obama signed into law the FAA Modernization and Reform Act of 2012. 81 The Act not only details FAA funding for the next four years but also mandates the FAA to develop guidelines for civil and public unmanned aircraft integration into the national airspace.82 The Act ultimately requires the FAA to have implemented regulations for public and civilian drone use by December 2015.83 The Act expressly directs the FAA to permit law enforcement operation of unmanned aircraft that weigh less than 4.4 pounds under specified restrictions.84 The FAA’s stated mission and focus while working to integrate unmanned aircraft into the national airspace is safety.85 One of the biggest safety concerns over the integration of drones into the national airspace is the absence of a “sense and avoid” capability in most drones.86 Recent crashes87 and hacks88 have also raised safety concerns over the future nationwide use of drones. In response to the Act, the FAA has started making changes to the current unmanned aircraft guidelines.89 The process for publicly operated drones remains similar to the 2007 process, requiring law enforcement agencies to first apply for a COA.90 This COA will serve training and evaluation purposes and if the agency can prove to be proficient in flying its drone it will be granted an operational COA.91 Along with safety concerns, privacy concerns have also developed over the authorization of governmental domestic drone use.92 The general privacy concern is that drone use will infringe upon areas protected under the Fourth Amendment, areas in which individuals enjoy a reasonable expectation of privacy.93 Privacy concerns have already been raised regarding the use of drones for surveillance along the Canadian and Mexican borders. 94 New advances in drone technologies increase such privacy concerns. 95 Many privacy organizations have called for the FAA to include privacy concerns in the new regulations of unmanned aerial vehicles.96 However, it has also been suggested that the FAA is not properly equipped to create regulations that properly consider individual privacy.97 There is also concern that knowledge that an individual’s daily movements will be under constant surveillance could lead to an overall chilling of First Amendment protected expressions.

### 1AC (3/6)

#### Contention Two is Totalitarianism:

#### First, domestic drones are rapidly ushering in a total surveillance state.

**Ghoshray, 2013**

(Dr. Saby [PhD]; “Domestic Surveillance Via Drones: Looking through the Lens of the Fourth Amendment,” Spring 2013; Lexis)

This Orwellian dystopia is no imagination. Rather, it may be coming sooner than any of us can imagine. **Welcome to the post-modern America--where society may be heading to** a fast track dissent into the abyss of **limitless government surveillance. The domestic drones have arrived, and they are almost ready to intrude upon our sacrosanct zone of private seclusion.** n2 The above scenarios are certainly not this author's imagination. They are not bad dreams or morbid fantasies either. Instead, they are based on the recorded incidences of killer drones wreaking havoc in the civilian communities in the rugged mountains of Pakistan, Afghanistan, and Yemen. n3 **The** [\*581] very **same drones are now waiting for** either a legislative nod or the **regulatory approval to begin hovering over the byways and alleys of America.** Yet, it seems the national discourse has not awakened to this new reality. These drones are relatively cheap to build, remotely controlled, and devoid of emotions and physiological limitations. **Today's drones can both strike with deadly finality** n4 **and peer deep into individual** homes with see-through imaging capability, n5 highpowered zoom lenses, n6 and night-vision capability.

### 1AC (4/6)

#### Second, drones destroy any sense of public anonymity - which is a vital part of American democracy.

**Burow, juris doctor at New England School of Law, 2013**

(Matthew, The Sentinel Clouds above the Nameless Crowd: Prosecuting Anonymity from Domestic Drones; 39 New Eng. J. on Crim. & Civ. Confinement 443 – text removed for length)

Walking down the street. Driving a car. Sitting on a park bench. By themselves, these actions do not exhibit an iota of privacy. The individual has no intention to conceal their movements; no confidentiality in their purpose. The individual is in the open, enjoying a quiet day or a peaceful Sunday drive. Yet as Chief Justice Rehnquist commented, **there is uneasiness if an individual suspected that these innocuous and benign movements were being recorded and scrutinized for future reference.** 119 If **the "uneasy" reaction** to which the Chief Justice referred is not based on a sense of privacy invasion, it **stems from something very close to it-a sense that one has a right to public anonymity**. 120 Anonymity is the state of being unnamed. 121 The right to public anonymity is the assurance that, when in public, one is unremarked and part of the undifferentiated crowd as far as the government is concerned. 122 That right is usually surrendered only when one does or says something that merits government attention, which most often includes criminal activity. 123 But when that attention is gained by surreptitiously operated UASs that are becoming more affordable for local law enforcement agencies, "it evades the ordinary checks that constrain abusive law enforcement practices ... : 'limited police resources and community hostility."' 12 5 *[\*\*text removed for brevity*\*\*] Therefore, with a potentially handcuffed judiciary, the protection of anonymity falls to the legislature. Based on current trends in technology and a keen interest taken by law enforcement in the advancement of UAS integration into national airspace, it is clear that drones pose a looming threat to Americans' anonymity. 129 Even when UASs are authorized for noble uses such as search and rescue missions, fighting wildfires, and assisting in dangerous tactical police operations, UASs are likely to be quickly embraced by law enforcement for more controversial purposes. [\*\**text removed for brevity*\*\*] In Bentham's vision, there is no need for prison bars, chains or heavy locks; the person who is subjected to the field of visibility of the omnipresent guard plays both roles and he becomes the subject of his own subjection. 136 For Foucault, this "panopticism" was not necessarily bad when compared to other methods of exercising control as this sort of "subtle coercion" could lead people to be more productive and efficient members of society. 137 Following Foucault's reasoning, an omnipresent UAS circling above a city may be similar to a Panopticon guard tower and an effective way of keeping the peace. The mere thought of detection may keep streets safer and potential criminals at bay. However, the impact on cherished democratic ideals may be too severe. *[\*\*text removed for brevity\*\**] As Justice Douglas understood, government surveillance stifles the cherished ideal of an American society that thrives on free-spiritedness in public. 39 Without the right to walk the streets in public, free from the fear of high surveillance, our American values would dissipate into that resembling a totalitarian state that attacks the idea of privacy as immoral, antisocial and part of the dissident cult of individualism.

### 1AC (5/6)

#### And, drone use distances law enforcement from the people they surveil – justifying increasingly violent repression in the name of security.

**Burow, juris doctor at New England School of Law, 2013**

(Matthew, The Sentinel Clouds above the Nameless Crowd: Prosecuting Anonymity from Domestic Drones; 39 New Eng. J. on Crim. & Civ. Confinement 443 – text removed for length)

This Note has explored the philosophical and psychological effects of panoptic surveillance and the need for protection.2 A mere suspicion of a UAS flying high in sky can have a chilling effect on democracy that most Americans would consider intolerable. 230 But what about the psychological changes UASs will bring about in law enforcement? The following is an excerpt from a news report on the mindset of UAS pilots who operate military drones in overseas combat missions: Bugsplat is the official term used by US authorities when humans are killed by drone missiles .... [I]t is deliberately employed as a psychological tactic to dehumanise targets so operatives overcome their inhibition to kill .... It was Hitler who coined this phraseology in Nazi Germany during the Holocaust. In Mein Kampf, Hitler refers to Jews as vermin (volksungeziefer) or parasites (volksschtidling). In the infamous Nazi film, Der ewige Jude, Jews were portrayed as harmful pests that deserve to die. Similarly, in the Rwandan genocide, the Tutsis were described as "cockroaches." This is not to infer genocidal intent in US drone warfare, but rather to emphasise the dehumanising effect of this terminology in Nazi Germany and that the very same terms are used by the US in respect of their Pakistani targets. 231 Will John and Jane Doe-the casual saunterer-become part of the next group of bugs that must be swatted in the name of effective law enforcement? In answering that question, we should look to the skies once again and pray to the better angels of our nature for a worthy answer.

### 1AC (6/6)

#### Thus, we propose the following plan:

#### The United States Congress should prohibit the use of drones for domestic surveillance without a warrant.

#### Contention Three is Solvency:

#### Requiring warrants ensures the government is accountable – preventing abuse of drones.

Bauer, juris doctor at Boston College, 2013

(Max, “Domestic Drone Surveillance Usage: Threats and Opportunities for Regulation,” *ACLU Briefing Paper*, Online: https://privacysos.org/domestic\_drones)

History shows that our response to threats to our physical safety mustn't involve programs or policies that diminish our core rights. Two centuries ago, during a time of great national insecurity, the War of 1812, the Constitution’s primary author, President James Madison, took virtually no steps to diminish civil liberties. Madison's approach did not lead to the nation’s demise. [56] With the rise of domestic drones as a cherry on top of an already sprawling surveillance state, America is headed in the opposite direction. But there is time yet to ensure the technology doesn't trample all over our rights. If mass drone surveillance is inescapable, warrant and data collection reporting requirements will provide a critical check against government abuses. Justice Brandeis has written, “Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman.” [57] Domestic drones can monitor individuals almost constantly; it’s therefore essential to have sunlight shine upon their operators, to monitor their actions. The publicity necessary to hold their operations accountable to the public requires transparency and accountability. [58] Drone usage will continue to expand and may not stop even at infrared camera surveillance and biometric data acquisition. The Guardian’s Glenn Greenwald has cautioned that although domestic drones may currently be limited to those outfitted only with surveillance equipment, given the increasing militarization of domestic law enforcement, the time may come soon when domestic drones are weaponized. [59] But even short of that futuristic nightmare, drone surveillance already poses a new threat to liberty at home. As our Fourth Amendment search protection diminishes with the progress of technology, [60] legislative initiatives and public outcry may be the only way to protect the right to privacy in the age of domestic drones.

### Drone Integration Add-On Advantage (1/3)

#### Failure to reform drone privacy standards results in public and state backlash – results in bans on all drone use.

Sorcher, 2013

(Sara, reporter for the national journal, “The Backlash Against Drones," nationaljournal, http://www.nationaljournal.com/magazine/the-backlash-against-drones-20130221, 2/21)

Public concerns are not limited to Seattle. Lawmakers in at least 11 states want to restrict the use of drones because of fears they will spy on Americans, and some are pushing to require warrants before the robots collect evidence in investigations. Just this month, the Virginia General Assembly passed a two-year moratorium on drones. The outcry comes after the Electronic Frontier Foundation sued last year for a list of drone applicants within the U.S. When that information went public, staff attorney Jennifer Lynch says, “it really got people up in arms about how drones are being used, and got people to question their city councils and local law-enforcement agencies to ask for appropriate policies to be put in place to regulate drone usage.” Drones change the game: Nearly continuous surveillance could be possible without a physical intrusion such as a property search or an implanted listening device. The flying robots can carry high-powered cameras, even facial-recognition software or thermal imaging to “see” through walls. They can hover, potentially undetected, for hours or days at a time. As of yet, however, there are no laws governing the use of domestic drones when it comes to privacy. Unless Congress or the executive branch moves to regulate the robots’ use before they take to the skies en masse, states will likely continue to try to limit or ban drone use altogether, which could stymie their potential for other, beneficial uses. And failing to enact privacy limits only increases the likelihood of an incident in which the public perceives that the technology is being misused.

### Drone Integration Add-On Advantage (2/3)

#### Commercial drone use is key improve the efficiency of every sector of the economy.

Dubravac, 2014

(Shawn, Chief economist of the Consumer Electronics Association, *Richmond Times-Dispatch*, "How commercial drones can drive economic growth", 9/2, http://www.richmond.com/opinion/their-opinion/guest-columnists/article\_a849638c-bf53-514d-a793-51255162a0bf.html)

Drones are an exceptional example of how emerging technologies can increase the productivity of myriad diverse businesses. Whether monitoring valuable infrastructure, quickly and inexpensively surveying an area, or delivering rich video in real time, drones will change the way businesses do what they do. The CEA estimates the costs related to using a drone may be one-tenth the cost of other alternatives of certain business activities. Because drones are such efficient cost-reducers for various use-cases, entirely new services and consumer benefits are now on their way to market. In some ways, the marketplace for commercial drones is limited only by our imaginations. Drones have already helped catch cattle rustlers, capture wedding memories and monitor national borders. In the agricultural sector alone, drones are farming crops, weeding fields and applying fertilizers. Eventually, this technology will be integral to media outlets, real estate professionals and emergency first responders. In July, a three-day search for a missing senior in Wisconsin ended when an amateur drone pilot joined the effort and spotted the man after only 20 minutes. As in most nascent markets, companies are experimenting with drones across numerous business applications. In July, Amazon petitioned the FAA for an exemption to allow the company to test drones in the U.S., an effort to implement same-day package delivery. Such experimentation can lead to lasting innovation, new business models and economic growth. Without the exemptions, Amazon may have to move its research and development operations abroad, resulting in fewer domestic jobs and less national investment. In the absence of federal guidelines from the FAA, states are instead crafting their own drone laws, creating a patchwork of different and diverse state laws. According to the National Conference of State Legislatures, 16 states including Virginia have enacted 20 laws regarding drone use — the latest laws, in Tennessee and Indiana, went into effect July 1. This maze of regulations will make compliance much more complicated for companies that want to incorporate drones into their commercial operations. We shouldn’t delay any longer in opening our skies to new economic growth. While we’re waiting for the government to provide clarity, the projected jobs, economic activity and $4.4 million in added tax revenue the drone sector will provide in Virginia over the coming years are drifting that much further out of reach. We need to feed tomorrow’s economic engine today, but the absence of forward thinking is hindering our potential.

### Drone Integration Add-On Advantage (3/3)

#### And, economic decline causes competition for resources and instability that escalates and results in international conflict.

Harris and Burrows, 2009

(Counselor in the National Intelligence Council, the principal drafter of Global Trends 2025, \*\*member of the NIC’s Long Range Analysis Unit “Revisiting the Future: Geopolitical Effects of the Financial Crisis”, Washington Quarterly, <http://www.twq.com/09april/docs/09apr_burrows.pdf>)

Increased Potential for Global Conflict Of course, the report encompasses more than economics and indeed believes the future is likely to be the result of a number of intersecting and interlocking forces. With so many possible permutations of outcomes, each with ample opportunity for unintended consequences, there is a growing sense of insecurity. Even so, history may be more instructive than ever. While we continue to believe that the Great Depression is not likely to be repeated, the lessons to be drawn from that period include the harmful effects on fledgling democracies and multiethnic societies (think Central Europe in 1920s and 1930s) and on the sustainability of multilateral institutions (think League of Nations in the same period). There is no reason to think that this would not be true in the twenty-first as much as in the twentieth century. For that reason, the ways in which the potential for greater conflict could grow would seem to be even more apt in a constantly volatile economic environment as they would be if change would be steadier. In surveying those risks, the report stressed the likelihood that terrorism and nonproliferation will remain priorities even as resource issues move up on the international agenda. Terrorism’s appeal will decline if economic growth continues in the Middle East and youth unemployment is reduced. For those terrorist groups that remain active in 2025, however, the diffusion of technologies and scientific knowledge will place some of the world’s most dangerous capabilities within their reach. Terrorist groups in 2025 will likely be a combination of descendants of long established groups inheriting organizational structures, command and control processes, and training procedures necessary to conduct sophisticated attacks and newly emergent collections of the angry and disenfranchised that become self-radicalized, particularly in the absence of economic outlets that would become narrower in an economic downturn. The most dangerous casualty of any economically-induced drawdown of U.S. military presence would almost certainly be the Middle East. Although Iran’s acquisition of nuclear weapons is not inevitable, worries about a nuclear-armed Iran could lead states in the region to develop new security arrangements with external powers, acquire additional weapons, and consider pursuing their own nuclear ambitions. It is not clear that the type of stable deterrent relationship that existed between the great powers for most of the Cold War would emerge naturally in the Middle East with a nuclear Iran. Episodes of low intensity conflict and terrorism taking place under a nuclear umbrella could lead to an unintended escalation and broader conflict if clear red lines between those states involved are not well established. The close proximity of potential nuclear rivals combined with underdeveloped surveillance capabilities and mobile dual-capable Iranian missile systems also will produce inherent difficulties in achieving reliable indications and warning of an impending nuclear attack. The lack of strategic depth in neighboring states like Israel, short warning and missile flight times, and uncertainty of Iranian intentions may place more focus on preemption rather than defense, potentially leading to escalating crises. Types of conflict that the world continues to experience, such as over resources, could reemerge, particularly if protectionism grows and there is a resort to neo-mercantilist practices. Perceptions of renewed energy scarcity will drive countries to take actions to assure their future access to energy supplies. In the worst case, this could result in interstate conflicts if government leaders deem assured access to energy resources, for example, to be essential for maintaining domestic stability and the survival of their regime. Even actions short of war, however, will have important geopolitical implications. Maritime security concerns are providing a rationale for naval buildups and modernization efforts, such as China’s and India’s development of blue water naval capabilities. If the fiscal stimulus focus for these countries indeed turns inward, one of the most obvious funding targets may be military. Buildup of regional naval capabilities could lead to increased tensions, rivalries, and counterbalancing moves, but it also will create opportunities for multinational cooperation in protecting critical sea lanes. With water also becoming scarcer in Asia and the Middle East, cooperation to manage changing water resources is likely to be increasingly difficult both within and between states in a more dog-eat-dog world.

### Answers to: Economic decline doesn’t cause war

#### [ ] Economic decline results in conflict – it exacerbates existing tensions and pushes them to spillover.

Auslin, 2009

(Michael, Resident Scholar – American Enterprise Institute, and Desmond Lachman – Resident Fellow – American Enterprise Institute, “The Global Economy Unravels”, Forbes, 3-6, <http://www.aei.org/article/100187>)

What do these trends mean in the short and medium term? The Great Depression showed how social and global chaos followed hard on economic collapse. The mere fact that parliaments across the globe, from America to Japan, are unable to make responsible, economically sound recovery plans suggests that they do not know what to do and are simply hoping for the least disruption. Equally worrisome is the adoption of more statist economic programs around the globe, and the concurrent decline of trust in free-market systems. The threat of instability is a pressing concern. China, until last year the world's fastest growing economy, just reported that 20 million migrant laborers lost their jobs. Even in the flush times of recent years, China faced upward of 70,000 labor uprisings a year. A sustained downturn poses grave and possibly immediate threats to Chinese internal stability. The regime in Beijing may be faced with a choice of repressing its own people or diverting their energies outward, leading to conflict with China's neighbors. Russia, an oil state completely dependent on energy sales, has had to put down riots in its Far East as well as in downtown Moscow. Vladimir Putin's rule has been predicated on squeezing civil liberties while providing economic largesse. If that devil's bargain falls apart, then wide-scale repression inside Russia, along with a continuing threatening posture toward Russia's neighbors, is likely. Even apparently stable societies face increasing risk and the threat of internal or possibly external conflict. As Japan's exports have plummeted by nearly 50%, one-third of the country's prefectures have passed emergency economic stabilization plans. Hundreds of thousands of temporary employees hired during the first part of this decade are being laid off. Spain's unemployment rate is expected to climb to nearly 20% by the end of 2010; Spanish unions are already protesting the lack of jobs, and the specter of violence, as occurred in the 1980s, is haunting the country. Meanwhile, in Greece, workers have already taken to the streets. Europe as a whole will face dangerously increasing tensions between native citizens and immigrants, largely from poorer Muslim nations, who have increased the labor pool in the past several decades. Spain has absorbed five million immigrants since 1999, while nearly 9% of Germany's residents have foreign citizenship, including almost 2 million Turks. The xenophobic labor strikes in the U.K. do not bode well for the rest of Europe. A prolonged global downturn, let alone a collapse, would dramatically raise tensions inside these countries. Couple that with possible protectionist legislation in the United States, unresolved ethnic and territorial disputes in all regions of the globe and a loss of confidence that world leaders actually know what they are doing. The result may be a series of small explosions that coalesce into a big bang.

### Answers to: Economy is resilient

#### [ ] The global economy is very fragile – lack of government support for technological innovations has left the global economy fragile.

Isidore, 2011

(Chris, CNN money, Recession 2.0 would hurt worse, <http://money.cnn.com/2011/08/10/news/economy/double_dip_recession_economy>)

The risk of double dip recession is rising.¶ And while economists disagree on just how likely the U.S. economy is to fall into another downturn, they generally agree on one thing -- a new recession would be worse than the last and very difficult to pull out of.¶ "Going back into recession now would be scary, because we don't have the resources or the will to respond, and our initial starting point is such a point of weakness," said Mark Zandi, chief economist at Moody's Analytics. "It won't feel like a new recession. It would likely feel like a depression."¶ Zandi said the recent sell-off in stocks have caused him to raise the odds of a new recession to 33% from 25% only 10 days ago.¶ Other economists surveyed by CNNMoney are also raising their recession risk estimates. The survey found an average chance of a new recession to be about 25%, up from a 15% chance only three months ago.¶ Of the 21 economists who responded to the survey, six have joined Zandi in increasing their estimates in just the last few days. The main reason: the huge slide in stocks. Standard & Poor's downgrade of the U.S. credit rating is another concern.¶ "The correction in equity markets raises the risk of recession due to the negative hit to wealth and confidence," said Sal Guatieri, senior economist for BMO Capital Markets.¶ Even with a 430-point rebound in the Dow Jones industrial average Tuesday following the Federal Reserve meeting, major U.S. stock indexes have lost more than 11% of their value over the last 12 trading days.¶ Recovery at risk¶ A plunge in stocks doesn't necessarily mean a new recession. The economy avoided a recession after the stock market crash of 1987.¶ "Stock price declines are often misleading indicators of future recessions," said David Berson, chief economist of BMI Group.¶ But with the economy already so fragile, the shock of another stock market drop and resulting loss of wealth could be the tipping point.¶ "It really does matter where the economy is when it gets hit by these shocks," said Zandi. "If we all pull back on spending, that's a prescription for a long, painful recession," he said.¶ Most economists say they aren't worried that S&P's downgrade makes recession more likely, although a few said any bad news at this point increases the risk.¶ "The downgrade has a psychological impact in terms of hurting consumer confidence," said Lawrence Yun, chief economist with the National Association of Realtors.¶ On shakier ground¶ Another recession could be even worse than the last one for a few reasons.¶ For starters, the economy is more vulnerable than it was in 2007 when the Great Recession began. In fact, the economy would enter the new recession much weaker than the start of any other downturn since the end of World War II.¶ Unemployment currently stands at 9.1%. In November 2007, the month before the start of the Great Recession, it was just 4.7%.¶ And the large number of Americans who have stopped looking for work in the last few years has left the percentage of the population with a job at a 28-year low.¶ Various parts of the economy also have yet to recover from the last recession and would be at serious risk of lasting damage in a new downturn.¶ Home values continue to lose ground and are projected to continue their fall. While manufacturing has had a nice rebound in the last two years, industrial production is still 18% below pre-recession levels. ¶ There are nearly 900 banks on the FDIC's list of troubled institutions, the highest number since 1993. Only 76 banks were at risk as the Great Recession took hold.¶ But what has economists particularly worried is that the tools generally used to try to jumpstart an economy teetering on the edge of recession aren't available this time around.¶ "The reason we didn't go into a depression three years ago is the policy response by Congress and the Fed," said Dan Seiver, a finance professor at San Diego State University. "We won't see that this time."¶ Three times between 2008 and 2010, Congress approved massive spending or temporary tax cuts to try to stimulate the economy. But fresh from the bruising debt ceiling battle and credit rating downgrade, and with elections looming, the federal government has shown little inclination to move in that direction.¶ So this new recession would likely have virtually no policy effort to counteract it.

### Answers to: Local agencies will still use drones

#### [ ] State governments are banning drone use by local agencies already.

Hudson, professor of law at Vanderbilt, 2015

(David, “Drones at Home: States eye regulating aerial surveillance,” *ABA Journal*¸ Feb 1, Online: http://www.abajournal.com/magazine/article/how\_should\_states\_regulate\_drones\_and\_aerial\_surveillance)

States are taking notice and considering regulation. According to the National Conference of State Legislators, more than 20 states have passed laws related to drones. Some limit law enforcement’s use of drones or other unmanned aircraft. For example, in Idaho, a law signed in 2013 provides that, except for emergencies “for safety, search-and-rescue or controlled substance investigations,” no person or agency may use a drone to conduct surveillance of private property without a warrant. Tennessee has a similar law known as the Freedom from Unwarranted Surveillance Act. The law allows aggrieved individuals the right to sue law enforcement agencies in civil court for violations. It also provides that “no data collected on an individual, home or areas other than the target that justified deployment may be used, copied or disclosed for any purpose,” and that such data must be deleted within 24 hours of collection. “The legislation doesn’t eliminate the use of drones,” says Austin, Texas-based attorney Gerry Morris, co-chair of the National Association of Criminal Defense Attorneys’ Fourth Amendment Committee. They “require some sort of showing of probable cause. This is something that is constantly overlooked. Just because government officials are required to go get a warrant doesn’t mean they won’t be able to use the drones. It just means that they are required to follow the Constitution when they use them.”

### Answers to: Government agencies won’t abuse drones

#### [ ] Drones are already being abused – that’s because there are literally NO rules about how they are used by government agencies.

**Talai, lawyer with the ACLU, 2014**

(Andrew, “The Fourth Amendment and Police Discretion in the Digital Age,” 102 Cal. L. Rev. 729,

Lexis/SEP)

**Law enforcement agencies have begun deploying drones for routine domestic surveillance operations, unrestrained by constitutional scrutiny.** Indeed, Congress has mandated a comprehensive integration of unmanned aerial systems into the national airspace no later than September 30, 2015. But does the Fourth Amendment to the United States Constitution proscribe such drone surveillance as an unreasonable search? While this question cannot be easily answered under conventional precedents, doctrinal inconsistency raises this Comment’s central question: What role will the Fourth Amendment play in an age of pervasive digital surveillance and limited privacy rights? In the last few decades, the Supreme Court has narrowed its vision of Fourth Amendment rights to an opaque privacy rationale. The Court has muddled doctrine and strained to avoid difficult issues involving technological progress. A recent example of this phenomenon came in the 2012 decision, United States v. Jones, where the Court paradoxically revived the common law trespass test for Fourth Amendment searches, as a proxy for the “degree of privacy that existed” at the founding. This Comment argues, instead, for a “pluralist” approach to understanding Fourth

Amendment searches that would—in addition to securing privacy and property—proscribe any search that is a California nonprofit corporation. CLR and the authors are solely responsible for the content of publications. As such, this Comment’s major concern with domestic drone surveillance is not

“privacy.” In the vast majority of cases, police will not use drones to observe “at what hour each night the lady of the house takes her daily sauna and bath.”60 Although this Comment does not focus on “voyeuristic” or Peeping Tom drones,61 intimate privacy concerns are relevant Fourth Amendment values that deserve protection. To be sure, one can imagine such distasteful surveillance being used for blackmail and persuasion (among other things), even from public vantage points. However, those privacy concerns are being trumpeted so loudly that they have obscured another relevant problem with drone surveillance—discriminatory sorting through discretionary law enforcement. **More precisely, the fear is “provid[ing] law enforcement with a swift, efficient, invisible, and cheap way of tracking the movements of virtually anyone and everyone they choose.”62 Police, through legislative encouragement and judicial acquiescence, now have power—unmatched in history**—on the streets of this country: “a form of paramilitarized violence found **in a rapidly expanding criminal justice-industrial complex**, with both ideological and material connections to the military industrial complex.”63 **Drone surveillance is yet another tool in the arsenal of police discretion.**

### Answers to: Surveillance only impact criminals

#### [ ] The idea that only those with something to hide should worry trivializes the importance of privacy concerns.

**Scheer, professor of journalism at USC, 2015**

(Robert, They Know Everything About You; Nation Books; p. 81-82)

An even darker defense of the end-of-privacy doctrine had been offered a month earlier by Google's Eric Schmidt, who impugned the innocence of consumers who worry about snooping by Google and other companies. **"If you have something that you don't want anyone to know, maybe you shouldn't be doing it in the first place," Schmidt stated** in an interview for a December 2009 CNBC Special, "Inside the Mind of Google."5 **The ability of the fast-growing Internet data-mining companies to trivialize privacy concerns succeeded because the target audience of younger consumers was either indifferent to invasions of their privacy or ignorant of the extent and depth of that data collection.** It was remarkable that an American social culture that had for so long been moored to a notion of individual sovereignty predicated on the ability to develop one's identity, ideas, and mores in private, had, in a wink, become willing to surrender any such notion. **Americans had fought and died for the right to have privately developed papers, conversations, friendships, and diaries**, especially in our homes. Yet here we were as a society voluntarily moving so much of that into digital spaces owned and managed by corporations we have no control over. This **relinquishing of the most private information about one's essence and aspirations became the norm in a shockingly short period, examined only lightly and in passing.** As we shared more and more with ever-widening social networks, it seemed okay as long as the companies securely stored this precious data, to be used only to enhance the consumer experience. We counted on the self-interest of the corporation not to harm us, not to bite the hand that feeds. But the Snowden revelations changed all that by exposing how easily the government could access-and indeed was accessing our personal info. That troubling confluence between the corporate world and the state caught the public's attention in a way that Internet companies feared might be game changing, threatening the culture of trust needed to continue gathering that data. Also straining global confidence in Internet commerce was the shock of those outside the country who had bought into the myth that US-based multinationals were international in their obligations, but who now found them to be subservient to the whims of Washington. 6 That was a message that US companies, up against a saturated domestic market for their products, found particularly alarming, since they depend on global growth to please shareholders.

### Answers to: Drones won’t violate privacy

#### [ ] Drones ensure that privacy will be eroded – they’re so advanced they can be used in invasive ways.

Stanley & Crump, 2011

(Jay – Senior Policy Analyst @ ACLU & Catherine – Professor @ Berkeley Law School, “Protecting Privacy From Aerial Surveillance: Recommendations for Government Use of Drone Aircraft,” *ACLU*, Online: <https://www.aclu.org/files/assets/protectingprivacyfromaerialsurveillance.pdf>)

Tracking. The Justice Department currently claims the authority to monitor Americans’ comings and goings using GPS tracking devices—without a warrant. Fleets of UAVs, interconnected and augmented with analytics software, could enable the mass tracking of vehicles and pedestrians around a wide area. • New uses. The use of drones could also be expanded from surveillance to actual intervention in law enforcement situations on the ground. Airborne technologies could be developed that could, for example, be used to control or dispel protesters (perhaps by deploying tear gas or other technologies), stop a fleeing vehicle, or even deploy weapons.61 In addition, drones raise many of the same issues that pervasive video surveillance brings in any context. For example: • Chilling effects. What would be the effect on our public spaces, and our society as a whole, if everyone felt the keen eye of the government on their backs whenever they ventured outdoors? Psychologists have repeatedly found that people who are being observed tend to behave differently, and make different decisions, than when they are not being watched. This effect is so great that a recent study found that “merely hanging up posters of staring human eyes is enough to significantly change people’s behavior.”62 Voyeurism. Video surveillance is susceptible to individual abuse, including voyeurism. In 2004, a couple making love on a dark nighttime rooftop balcony, where they had every reason to expect they enjoyed privacy, were filmed for nearly four minutes by a New York police helicopter using night vision. This is the kind of abuse that could become commonplace if drone technology enters widespread use. (Rather than apologize, NYPD officials flatly denied that this filming constituted an abuse, telling a television reporter, “this is what police in helicopters are supposed to do, check out people to make sure no one is … doing anything illegal”).63 • Discriminatory targeting. The individuals operating surveillance systems bring to the job all their existing prejudices and biases. In Great Britain, camera operators have been found to focus disproportionately on people of color. According to a sociological study of how the systems were operated, “Black people were between one-and-a-half and two-and-a-half times more likely to be surveilled than one would expect from their presence in the population.”64 • Institutional abuse. In addition to abuse by the inevitable “bad apples” within law enforcement, there is also the danger of institutional abuse. Sometimes, bad policies are set at the top, and an entire law enforcement agency is turned toward abusive ends. That is especially prone to happen in periods of social turmoil and intense political conflict. During the labor, civil rights, and anti-Vietnam war movements of the 20th century, the FBI and other security agencies engaged in systematic illegal behavior against those challenging the status quo. And once again today we are seeing an upsurge in spying against peaceful political protesters across America.65 • Automated enforcement. Drones are part of a trend toward automated law enforcement, in which cameras and other technologies are used to mete out justice with little or no human intervention. This trend raises a variety of concerns, such as the fact that computers lack the judgment to fairly evaluate the circumstances surrounding a supposed violation, and may be susceptible to bugs and other software errors, or simply are not programmed to fairly and properly encapsulate the state of the law as passed by legislatures.66

### Answers to: Warrants won’t stop government abuse of drones

#### [ ] Surveillance isn’t inherently bad – it’s a question of making sure it’s used in a limited fashion. Warrants are key to prevent government overstep.

Stanley & Crump, 2011 (Jay – Senior Policy Analyst @ ACLU & Catherine – Professor @ Berkeley Law School, “Protecting Privacy From Aerial Surveillance: Recommendations for Government Use of Drone Aircraft,” *ACLU*, Online: <https://www.aclu.org/files/assets/protectingprivacyfromaerialsurveillance.pdf>)

UAVs are potentially extremely powerful surveillance tools, and that power, like all government power, needs to be subject to checks and balances. Like any tool, UAVs have the potential to be used for good or ill. If we can set some good privacy ground rules, our society can enjoy the benefits of this technology without having to worry about its darker potentials. We impose regulations on what law enforcement can do all the time, for example allowing law enforcement to take a thermal image of someone’s home only when they get a warrant. We need to impose rules, limits and regulations on UAVs as well in order to preserve the privacy Americans have always expected and enjoyed. The ACLU recommends at a minimum the following core measures be enacted to ensure that this happens: • Usage restrictions. UAVs should be subject to strict regulation to ensure that their use does not eviscerate the privacy that Americans have traditionally enjoyed and rightly expect. Innocent Americans should not have to worry that their activities will be scrutinized by drones. To this end, the use of drones should be prohibited for indiscriminate mass surveillance, for example, or for spying based on First Amendment-protected activities. In general, drones should not be deployed except: o where there are specific and articulable grounds to believe that the drone will collect evidence relating to a specific instance of criminal wrongdoing or, if the drone will intrude upon reasonable expectations of privacy, where the government has obtained a warrant based on probable cause; or o where there is a geographically confined, time-limited emergency situation in which particular individuals’ lives are at risk, such as a fire, hostage crisis, or person lost in the wilderness; or o for reasonable non-law enforcement purposes by non-law enforcement agencies, where privacy will not be substantially affected, such as geological inspections or environmental surveys, and where the surveillance will not be used for secondary law enforcement purposes. • Image retention restrictions. Images of identifiable individuals captured by aerial surveillance technologies should not be retained or shared unless there is reasonable suspicion that the images contain evidence of criminal activity or are relevant to an ongoing investigation or pending criminal trial.

### Answers to: Drones create government accountability

#### [ ] There’s currently no accountability for drone use and the information drones collect isn’t shared publicly – mass surveillance only benefits the government.

Stanley & Crump, 2011 (Jay – Senior Policy Analyst @ ACLU & Catherine – Professor @ Berkeley Law School, “Protecting Privacy From Aerial Surveillance: Recommendations for Government Use of Drone Aircraft,” *ACLU*, Online: <https://www.aclu.org/files/assets/protectingprivacyfromaerialsurveillance.pdf>)

One point that is often made with regards to new surveillance technologies is that, while they may increase government surveillance of individuals, they can also increase individuals’ ability to record the activities of officials, which can serve as a check on their power.67 Too often, however, the authorities seek to increase their surveillance over individuals (for example, by installing surveillance cameras throughout public spaces) while restricting individuals’ ability to use that same technology as a check against their power (for example, by attempting to prevent individuals from videotaping police68). Already, security experts have started expressing concern that unmanned aircraft could be used for terrorism69—which naturally raises the question: will individuals be able to make use of the new technology for their own purposes, or will government seek a monopoly over the new technology by citing fears of its use for terrorism?

### Answers to: Drones are key to public safety

#### **[ ] Unrestricted drone use will target profitable crimes like speeding – warrants ensure that drones are only used when they’re necessary for public safety.**

EPIC, 2014 (Electronic Privacy Information Center, “DRONES: Eyes in the Sky,” *Spotlight on Surveillance*, October, Online: https://epic.org/privacy/surveillance/spotlight/1014/drones.html)

The capacity to perform aerial surveillance is not new. However, the economics of aerial surveillance have changed dramatically. Low-cost drones, coupled with leaps in camera technology and cheap data storage, create the capacity for pervasive and indiscriminate surveillance. Surveillance technology is now economically and practically feasible for even small police forces. Quite simply, while the problem of aerial surveillance is quite old, the economic realities of the past served to limit the scope of the surveillance. In the past, a city police force could deploy an airplane or a helicopter with a camera attached to engage in surveillance, but the costs of fuel, a pilot, and video storage would have limited the time such a system remained in the air. Now, for the cost of a single police helicopter, a force could deploy dozens of drones. This capacity creates a host of dangers to civil liberties. Indiscriminate surveillance of an area may capture all of an individual’s movements. The Supreme Court has recognized that this type of data has the potential to reveal the most intimate details of one’s life. [108] Drone technology, such as ARGUS-IS (see above) can track the movements of tens of thousands of individuals at once. This has obvious implications for First Amendment rights, including the right to free association, the right to freely exercise of one’s religion and the right to speak anonymously. It also could threaten a more basic sense of privacy in a free society: the right to live without constant observation by the state. Additionally, the profit-motive of government drone contractors can create problematic incentives that could threaten privacy. When the government outsources law enforcement functions—such as the private ownership of stoplight cameras[109]—private companies are motivated to track the crimes that are the most profitable rather than the crimes that are the most dangerous. Punishing petty infractions such, as jay-walking, littering, and smoking in undesignated areas does not warrant dragnet surveillance of all public behavior. The proliferation of private drones could also have legal implications that make government surveillance more pervasive. For instance, if a drone producer offered cloud storage for information captured by private drones, that information could potentially be collected by the government without a warrant. And under some approaches to Fourth Amendment law, increased drone use by the public could mean that individuals have a reduced expectation of privacy with regard to government drone surveillance. [110] The threat that unregulated drone use poses to civil and constitutional rights is not conjecture. The capacity for indiscriminate surveillance exists. These programs could collect information on the actions of every citizen, without regard to suspicion or any connection to a crime. Law and public policy, at every level of government, must adapt to these technological advancements to ensure that the technical feasibility of a security state does not lead to the creation of one.

### Drones are ineffective

#### [ ] Multiple investigations show drones are ineffective at stopping terrorism – politicians only back drone use to appear strong on border security.

Barry, senior policy analyst at Center for International Policy, 2013

(Tom, “Drones Over Homeland,” April 23, *CIP*, Online: <http://www.ciponline.org/research/html/drones-over-the-homeland>)

The DHS Inspector General’s report is an important addition to a growing library of governmental reports that have exposed the fallacies, inefficiencies, and ineffectiveness of Homeland Security’s border drone program. Together, these reports also reveal an alarming pattern of deception and delusion within Customs and Border Protection and its Office of Air and Marine. The recent OIG report highlights the lack of transparency and accountability within the border drone program – a failing that has deepened as DHS has expanded the deployment of border drones since launching the program in 2004. Yet, even in the wake of the scathing OIG report, there are no signs that CBP, DHS, Congress or the White House is backing away from the dysfunctional and massively expensive drone program. The border drone program has received favored treatment by Congress (both Democrats and Republicans) and the White House (both Bush and Obama), even as CBP has proved unable to demonstrate that drones are effective instruments of border control. Widespread support in federal government for the drone program does not necessarily demonstrate a conviction that Predators on the border are fundamental to border control. Rather, it is likely an indication of the prevalence of political calculations that hold that the more money spent on border security, the better and safer the homeland will be. For some, a corollary is that more border security buildup makes it politically easier to pitch immigration reform. Given the continued support – and calls for increased funding – by both parties and the executive and legislative branches, CBP’s failure to revise or shut down the drone program is not surprising. Even after the release of the devastating OIG review, the House Homeland Security Committee overwhelmingly sent on to a Congressional vote yet another border security bill that would add billions of dollars to the DHS for border control, including increased drone surveillance.

### Mass surveillance hurts counter-terrorism efforts

#### [ ] Broad surveillance makes counter-terror tools ineffective – it gathers too much information to be analyzed.

Corrigan, lecturer at the Open University, 2015

(Ray; Mass Surveillance Will Not Stop Terrorism; Jan 25; Online: [www.slate.com/articles/health\_and\_science/new\_scientist/2015/01/mass\_surveillance\_against\_terrorism\_gathering\_intelligence\_on\_all\_is\_statistically.html](http://www.slate.com/articles/health_and_science/new_scientist/2015/01/mass_surveillance_against_terrorism_gathering_intelligence_on_all_is_statistically.html))

Police, intelligence, and security systems are imperfect. They process vast amounts of imperfect intelligence data and do not have the resources to monitor all known suspects 24/7. The French authorities lost track of these extremists long enough for them to carry out their murderous acts. You cannot fix any of this by treating the entire population as suspects and then engaging in suspicionless, blanket collection and processing of personal data. Mass data collectors can dig deeply into anyone’s digital persona but don’t have the resources to do so with everyone. Surveillance of the entire population, the vast majority of whom are innocent, leads to the diversion of limited intelligence resources in pursuit of huge numbers of false leads. Terrorists are comparatively rare, so finding one is a needle-in-a-haystack problem. You don’t make it easier by throwing more needleless hay on the stack. It is statistically impossible for total population surveillance to be an effective tool for catching terrorists. Even if your magic terrorist-catching machine has a false positive rate of 1 in 1,000—and no security technology comes anywhere near this—every time you asked it for suspects in the U.K. it would flag 60,000 innocent people. Law enforcement and security services need to be able to move with the times, using modern digital technologies intelligently and through targeted data preservation—not a mass surveillance regime—to engage in court-supervised technological surveillance of individuals whom they have reasonable cause to suspect. That is not, however, the same as building an infrastructure of mass surveillance. Mass surveillance makes the job of the security services more difficult and the rest of us less secure.

### Mass surveillance hurts counter-terrorism efforts

#### [ ] Warrants force law enforcement agencies to surveil smarter – it means they’ll gather more data on subjects of interest.

Schwartz, New Yorker contributor, 2015

(Mattathias, “The Whole Haystack,” Jan 26, Online: [www.newyorker.com/magazine/2015/01/26/whole-haystack](http://www.newyorker.com/magazine/2015/01/26/whole-haystack))

Before the event, every bit of hay is potentially relevant. “The most dangerous adversaries will be the ones who most successfully disguise their individual transactions to appear normal, reasonable, and legitimate,” Ted Senator, a data scientist who worked on an early post-9/11 program called Total Information Awareness, said, in 2002. Since then, intelligence officials have often referred to “lone-wolf terrorists,” “cells,” and, as Alexander has put it, the “terrorist who walks among us,” as though Al Qaeda were a fifth column, capable of camouflaging itself within civil society. Patrick Skinner, a former C.I.A. case officer who works with the Soufan Group, a security company, told me that this image is wrong. “We knew about these networks,” he said, speaking of the Charlie Hebdo attacks. Mass surveillance, he continued, “gives a false sense of security. It sounds great when you say you’re monitoring every phone call in the United States. You can put that in a PowerPoint. But, actually, you have no idea what’s going on.” By flooding the system with false positives, big-data approaches to counterterrorism might actually make it harder to identify real terrorists before they act. Two years before the Boston Marathon bombing, Tamerlan Tsarnaev, the older of the two brothers alleged to have committed the attack, was assessed by the city’s Joint Terrorism Task Force. They determined that he was not a threat. This was one of about a thousand assessments that the Boston J.T.T.F. conducted that year, a number that had nearly doubled in the previous two years, according to the Boston F.B.I. As of 2013, the Justice Department has trained nearly three hundred thousand law-enforcement officers in how to file “suspicious-activity reports.” In 2010, a central database held about three thousand of these reports; by 2012 it had grown to almost twenty-eight thousand. “The bigger haystack makes it harder to find the needle,” Sensenbrenner told me. Thomas Drake, a former N.S.A. executive and whistle-blower who has become one of the agency’s most vocal critics, told me, “If you target everything, there’s no target.” Drake favors what he calls “a traditional law-enforcement” approach to terrorism, gathering more intelligence on a smaller set of targets. Decisions about which targets matter, he said, should be driven by human expertise, not by a database.

### Drones can be hacked

#### [ ] Government regulation of drones is key to prevent terrorist hacking of drones.

Bernd, editor at Truthout, 2013   
(Candice, “The Coming Domestic Drone Wars,” September 19, Online: [www.truth-out.org/news/item/18951-the-coming-domestic-drone-wars#](http://www.truth-out.org/news/item/18951-the-coming-domestic-drone-wars))

Domestic Drone Weaknesses Cyber warfare may prove to be the most enduring challenge for the FAA when it comes to ensuring guidelines that will protect Americans adequately as drone technology makes its transition into civilian life. Peter Singer is the director of the Center for 21st Century Security and Intelligence and a senior fellow in the Foreign Policy program at Brookings Institute. He is the author of Wired for War: The Robotics Revolution and Conflict in the 21st Century. According to him, the primary weakness of drone technology is many systems' dependence on GPS signals and remote operation. Even military-grade drone technology can be co-opted, he said. In December 2011, the Iranian Army's electronic warfare unit brought down an American drone, the RQ-170 Sentinel, after it crossed into Iranian airspace. In Iraq in 2009, Iraqi insurgents were able to use $26 software to intercept the video feeds of US Predator drones in a manner "akin to a criminal listening in on the police radio scanner," Singer told Truthout. Most recently, a research team at the University of Texas was able to demonstrate successfully the spoofing of a UAV by creating false civil GPS signals that trick the drone's GPS receiver. "There aren't easy answers to these other than good encryption requirements," Singer told Truthout in an email. The Texas research team hoped to demonstrate the dangers of spoofing early on in the FAA's task to write the mandated rules for UAS integration in the national airspace, and the Department of Homeland Security invited the team to demonstrate the spoofing in New Mexico. "Vulnerability to jamming and spoofing depends highly on the design of the aircraft and control systems and vary across differing architectures. Minimum system performance and design standards developed for civil UAS designs will address these vulnerabilities," an FAA spokesman told Truthout. Whether minimum standards for system performance will be enough to address the changing dynamic of cyber warfare, and for that matter, technology, remains a question, but it's something the FAA and Homeland Security are examining as drone technology becomes more widespread in the US.

### Nuclear terrorism won’t happen

#### [ ] Terrorists lack the motivation and logistical support to acquire nuclear materials – much less assemble a bomb.

Weiss, professor at Stanford University’s Center for International Security, 2015

(Leonard, “On fear and nuclear terrorism,” March 3, *Bulletin of the Atomic Scientists*, Online: <http://thebulletin.org/2015/march/fear-and-nuclear-terrorism8072>)

A recent paper (Friedman and Lewis, 2014) postulates a scenario by which terrorists might seize nuclear materials in Pakistan for fashioning a weapon. While jihadist sympathizers are known to have worked within the Pakistani nuclear establishment, there is little to no evidence that terrorist groups in or outside the region are seriously trying to obtain a nuclear capability. And Pakistan has been operating a uranium enrichment plant for its weapons program for nearly 30 years with no credible reports of diversion of HEU from the plant. There is one stark example of a terrorist organization that actually started a nuclear effort: the Aum Shinrikyo group. At its peak, this religious cult had a membership estimated in the tens of thousands spread over a variety of countries, including Japan; its members had scientific expertise in many areas; and the group was well funded. Aum Shinrikyo obtained access to natural uranium supplies, but the nuclear weapon effort stalled and was abandoned. The group was also interested in chemical weapons and did produce sarin nerve gas with which they attacked the Tokyo subway system, killing 13 persons. AumShinrikyo is now a small organization under continuing close surveillance. What about highly organized groups, designated appropriately as terrorist, that have acquired enough territory to enable them to operate in a quasigovernmental fashion, like the Islamic State (IS)? Such organizations are certainly dangerous, but how would nuclear terrorism fit in with a program for building and sustaining a new caliphate that would restore past glories of Islamic society, especially since, like any organized government, the Islamic State would itself be vulnerable to nuclear attack? Building a new Islamic state out of radioactive ashes is an unlikely ambition for such groups. However, now that it has become notorious, apocalyptic pronouncements in Western media may begin at any time, warning of the possible acquisition and use of nuclear weapons by IS. Even if a terror group were to achieve technical nuclear proficiency, the time, money, and infrastructure needed to build nuclear weapons creates significant risks of discovery that would put the group at risk of attack. Given the ease of obtaining conventional explosives and the ability to deploy them, a terrorist group is unlikely to exchange a big part of its operational program to engage in a risky nuclear development effort with such doubtful prospects. And, of course, 9/11 has heightened sensitivity to the need for protection, lowering further the probability of a successful effort.

### Nuclear terrorism won’t happen

#### [ ] The threat of nuclear terrorism is inflated fear mongering – we must carefully reject the ways militarism structures public discourse on the issue.

Weiss, professor at Stanford University’s Center for International Security, 2015

(Leonard, “On fear and nuclear terrorism,” March 3, *Bulletin of the Atomic Scientists*, Online: <http://thebulletin.org/2015/march/fear-and-nuclear-terrorism8072>)

Fear of nuclear weapons is rational, but its extension to terrorism has been a vehicle for fear-mongering that is unjustified by available data. The debate on nuclear terrorism tends to distract from events that raise the risk of nuclear war, the consequences of which would far exceed the results of terrorist attacks. And the historical record shows that the war risk is real. The Cuban Missile Crisis and other confrontations have demonstrated that miscalculation, misinterpretation, and misinformation could lead to a ‘close call’ regarding nuclear war. Although there has been much commentary on the interest that Osama bin Laden, when he was alive, reportedly expressed in obtaining nuclear weapons, evidence of any terrorist group working seriously toward the theft of nuclear weapons or the acquisition of such weapons by other means is virtually nonexistent. The acquisition of nuclear weapons by terrorists requires significant time, planning, resources, and expertise, with no guarantees that an acquired device would work. It requires putting aside at least some aspects of a groups more immediate activities and goals for an attempted operation that no terrorist group has accomplished. While absence of evidence does not mean evidence of absence, it is reasonable to conclude that the fear of nuclear terrorism has swamped realistic consideration of the threat.

### Terrorism threats are inflated

#### [ ] The threat of terrorism is used to justify government power – unregulated surveillance will be used on innocent citizens too.

Weiss, professor at Stanford University’s Center for International Security, 2015

(Leonard, “On fear and nuclear terrorism,” March 3, *Bulletin of the Atomic Scientists*, Online: <http://thebulletin.org/2015/march/fear-and-nuclear-terrorism8072>)

The rise of the national surveillance state. Lowering the risk of terrorism, particularly the nuclear kind, is the quintessential reason that the mandarins of the national security state have given for employing the most invasive national surveillance system in history. “Finding the needle in the haystack” is how some describe the effort to discern terrorist plots from telephone metadata and intercepted communications. But the haystack keeps expanding, and large elements of the American population appear willing to allow significant encroachments on the constitutional protections provided by the Fourth Amendment. The fear of terrorism has produced this change in the American psyche even though there is no evidence that the collection of such data has resulted in the discovery of terrorist plots beyond those found by traditional police and intelligence methods. It is doubtful that we shall soon (if ever) see a return to the status quo ante regarding constitutional protections. This reduction in the freedom of Americans from the prying eyes of the state is a major consequence of the hyping of terrorism, especially nuclear terrorism. This is exemplified by the blithe conclusion in the previously referenced paper by Friedman and Lewis (2014), in which readers are advised to “be more proactive in supporting our government’s actions to ameliorate potential risks.” The National Security Agency should love this.

### Terrorism threats are inflated

#### [ ] The negative’s experts have a motive to exaggerate the likelihood of an attack – they’re industry talking heads.

Weiss, professor at Stanford University’s Center for International Security, 2015

(Leonard, “On fear and nuclear terrorism,” March 3, *Bulletin of the Atomic Scientists*, Online: <http://thebulletin.org/2015/march/fear-and-nuclear-terrorism8072>)

There is a tendency on the part of security policy advocates to hype security threats to obtain support for their desired policy outcomes. They are free to do so in a democratic society, and most come by their advocacy through genuine conviction that a real security threat is receiving insufficient attention. But there is now enough evidence of how such advocacy has been distorted for the purpose of overcoming political opposition to policies stemming from ideology that careful public exposure and examination of data on claimed threats should be part of any such debate. Until this happens, the most appropriate attitude toward claimed threats of nuclear terrorism, especially when accompanied by advocacy of policies intruding on individual freedom, should be one of skepticism. Interestingly, while all this attention to nuclear terrorism goes on, the United States and other nuclear nations have no problem promoting the use of nuclear power and national nuclear programs (only for friends, of course) that end up creating more nuclear materials that can be used for weapons. The use of civilian nuclear programs to disguise national weapon ambitions has been a hallmark of proliferation history ever since the Atoms for Peace program (Sokolski, 2001), suggesting that the real nuclear threat resides where it always has resided-in national nuclear programs; but placing the threat where it properly belongs does not carry the public-relations frisson currently attached to the word “terrorism.”

### Restrictions on presidential powers are inevitable

#### [ ] Restrictions on presidential powers are inevitable – it’s only a question of whether they are deliberate or haphazard.

Wittes, senior fellow and research director in public law at the Brookings Institution, 2009

(Benjamin, “Legislating the War on Terror: An Agenda for Reform,” 11-3-9, Book, p. 17)

A new administration now confronts the same hard problems that plagued its ideologically opposite predecessor, and its very efforts to turn the page on the past make acute the problems of institutionalization. For while the new administration can promise to close the detention facility at Guantanamo Bay and can talk about its desire to prosecute suspects criminally, for example, it cannot so easily forswear noncriminal detention. While it can eschew the term "global war on terror," it cannot forswear those uses of force—Predator strikes, for example—that law enforcement powers would never countenance. Nor is it hastening to give back the surveillance powers that Congress finally gave the Bush administration. In other words, its very efforts to avoid the Bush administrations vocabulary have only emphasized the conflicts hybrid nature—indeed- emphasized that the United States is building something new here, not merely applying something old.¶ That point should not provoke controversy. The evidence that the United States is fumbling toward the creation of hybrid institutions to handle terrorism cases is everywhere around us. U.S. law, for example, now contemplates extensive- probing judicial review of detentions under the laws of war—a naked marriage of criminal justice and wartime traditions. It also contemplates warrantless wiretapping with judicial oversight of surveillance targeting procedures—thereby mingling the traditional judicial role in reviewing domestic surveillance with the vacuum cleaner-type acquisition of intelligence typical of overseas intelligence gathering. Slowly but surely, through an unpredictable combination of litigation, legislation, and evolutionary developments within executive branch policy, the nation is creating novel institutional arrangements to authorize and regulate the war on terror. The real question is not whether institutionalization will take place but whether it will take place deliberately or haphazardly, whether the United States will create through legislation the institutions with which it wishes to govern itself or whether it will allow an endless sequence of common law adjudications to shape them.¶ The authors of the chapters in this book disagree about a great many things. They span a considerable swath of the U.S. political spectrum, and they would no doubt object to some of one another's policy prescriptions. Indeed, some of the proposals are arguably inconsistent with one another, and it will be the very rare reader who reads this entire volume and wishes to see all of its ideas implemented in legislation. What binds these authors together is not the programmatic aspects of their policy prescriptions but the belief in the value of legislative action to help shape the contours of the continuing U.S. confrontation with terrorism. That is, the authors all believe that Congress has a significant role to play in the process of institutionalization—and they have all attempted to describe that role with reference to one of the policy areas over which Americans have sparred these past several years and will likely continue sparring over the next several years.

### Balance of powers better than presidential powers

#### [ ] A balanced division of authority between Congress and the President is best – it prevents privacy violations but still gives the President room to act to protect the US.

Weinberger Assistant Professor at the University of Puget Sound, 2009

(Seth, "Balancing War Powers in an Age of Terror", The Good Society, 18(2), <http://muse.jhu.edu/journals/good_society/v018/18.2.weinberger.html>)

For the Founding Fathers, that balance emerged from the fundamental structure of constitutional government that they created. "Ambition must be made to counteract ambition," James Madison wrote in a powerful argument for the separation of powers.2 At first glimpse, this might seem to contradict Ford's advice to avoid "a constant rivalry" over the conduct of America's war efforts. But, if the rivalry over control of war powers occurs not with the branches fighting over the right to use this or that particular power but rather involves the presidency and Congress wielding their own specific powers both in pursuit of a coherent policy as well as to prevent the other from becoming too strong, then Ford's vision can be merged with that of the Founders. While constant rivalry and competition between the branches may not be desirable, neither is a situation in which one branch exercises unchecked power. A sound theory of war powers should create a situation in which each branch uses its unique strengths and weaknesses not only to check the ambitions of the other but also to develop common solutions to the challenges that threaten the security of the nation.3 The war on terror has posed considerable problems for the constitutional balance of powers between the executive and legislative branches. In its efforts to protect the United States in the wake of the September 11 attacks, the Bush administration has tried to expand the scope and breadth of executive power. Time and time again, when the constitutionality of its policies have been challenged, the executive branch has responded with claims of inherent presidential power to take actions necessary to defend the country. However, in almost every instance of a legal challenge to those policies, the administration has lost. What do these challenges and defeats mean for the overall distribution of war powers? On the one hand, the powers claimed by the executive branch would give the president unprecedented powers for a potentially indefinite period, as it is hard to imagine that terrorism—a tactic rather than an enemy—will ever be defeated. On the other hand, it must be recognized that the threat of international terrorism is no idle matter. Terrorism of the kind that manifested itself on September 11, 2001, is a threat unlike any other that the United States has ever faced. The question of allocating war powers between the president and Congress is a critical one. If too much power is concentrated in the hands of the executive, the country risks undermining basic constitutional protections of individual freedoms and eroding the democratic nature of the republic; if too much of a role is given to Congress, the country may not be able to effectively develop policies to protect itself. And when there is no clear theory guiding the actions of the government, policy muddles along, with the executive branch taking the lead by putting an idea into action and hoping that it will withstand judicial scrutiny. Thus there is a need for a balanced theory of war powers that respects the constitutional allocation of power and heeds the advice of President Ford.

### Presidential powers bad – National security

#### [ ] Executive flexibility undermines US security – limiting presidential powers is the best way to keep us safe.

Sayre, 2014

(Mike, MA in public policy from MSU, “THE RULE OF LAW IN THE FIGHT AGAINST TERRORISM: LESS EXECUTIVE POWER, MORE SECURITY,” American Journal of Political Science, 5-4-15, <http://ajps.org/2015/05/04/the-rule-of-law-in-the-fight-against-terrorism-less-executive-power-more-security/>)

The rationale for such repressive policies is that executive discretion is essential to respond effectively to terrorist activities, and thus the executive should be afforded legal flexibility to thwart security dangers. Without necessarily denying that the ethnic and religious communities in which potential terrorists have roots are important in fighting terrorism, the presumption is that executive discretion increases security from terrorism because there are political controls on how executive counterterrorism powers are used. If repressive policies would be harmful for terrorism prevention, so the argument goes, the executive will restrain itself from undertaking such suboptimal counterterrorism policies because citizens can punish ineffective usage of executive power at election times. The logic behind the security rationale for executive discretion appears simple and intuitive. If the executive cares about security from terrorism and also about being in office, and if the citizens are more likely to reelect the executive if it is successful in preventing terrorism, then allowing executive officials legal flexibility of action should translate into more security from terrorism. Our research questions this security rationale on its own terms. To this end, we developed a game-theoretic model to show that that even if citizens are less likely to reelect the government when failing to prevent terrorist attacks, that is, even if electoral controls on how executive counterterrorism powers are used are effective, security from terrorism can actually decrease if the executive has legal flexibility to choose any policy it finds optimal. In contrast, security from terrorism always increases if there are explicit legal limits on the executive’s counterterrorism actions. We also show that the executive achieves the objective of terrorism prevention more effectively when there are some limitations on its counterterrorism powers rather than when executive officials have legal flexibility to devise security policy. At the minimum, the analysis suggests that the burden of empirical proof should be on executive officials who must show that discretionary powers achieve the intended security benefits and, perhaps, whether such benefits can be achieved without setting aside fundamental liberal-democratic principles. Moreover, our analysis indicates that even when citizens want a readjustment in the balance between security and liberty, it is not necessarily security-beneficial if the executive itself decides on the scope of government power. Our research underscores a novel rationale for legal limits and checks on executive powers. The traditional Madisonian argument for such institutions is that they stem abuses of governmental power and thus help preserve citizens’ rights and liberties. Security crises challenge this very rationale. Times of duress are associated with unfettered governmental powers; ordinary, regular situations with separation of powers and checks and balances institutions. Without disputing the importance of constitutional limits and institutional checks within the tradition of a liberal distrust of government, the analysis here underscores another, perhaps less intuitive virtue: such institutional arrangements can increase a government’s capacity to prevent crises. Thus they might be a necessary component of structuring the government if the social objective is terrorism prevention. Our paper also contributes to an empirical literature on terrorism and political violence. Scholars have noted that liberal democracies often resort to repressive policies and focus their coercive efforts on political, ethnic or religious communities associated with a particular security threat. Scholars have also empirically shown that repressive tactics at odds with fundamental liberal-democratic principles can negatively affect security from terrorism, empirical findings that raise the following puzzle: why would a rational government intending to achieve security from terrorism nevertheless engage in repressive tactics that undermine it? Our model shows that it can be an equilibrium behavior for the executive to undertake repressive policies that harm security from terrorism, a behavior induced by electoral incentives to provide security from terrorism.

### Presidential powers bad – Dictatorship

#### [ ] Unchecked presidential powers destroy privacy and result in less effective policies through a dictatorship – war power checks key

Schneier, fellow at Harvard’s center for cyber-law, 2005

(Bruce, “The Security Threat of Unchecked Presidential Power,” 12-21-05, <https://www.schneier.com/blog/archives/2005/12/the_security_th_1.html>)

Yoo's memo ignored this. Written 11 days after Congress refused to grant the president wide-ranging powers, it admitted that "the Joint Resolution is somewhat narrower than the President's constitutional authority," but argued "the President's broad constitutional power to use military force ... would allow the President to ... [take] whatever actions he deems appropriate ... to pre-empt or respond to terrorist threats from new quarters." Even if Congress specifically says no. The result is that the president's wartime powers, with its armies, battles, victories, and congressional declarations, now extend to the rhetorical "War on Terror": a war with no fronts, no boundaries, no opposing army, and -- most ominously -- no knowable "victory." Investigations, arrests, and trials are not tools of war. But according to the Yoo memo, the president can define war however he chooses, and remain "at war" for as long as he chooses. This is indefinite dictatorial power. And I don't use that term lightly; the very definition of a dictatorship is a system that puts a ruler above the law. In the weeks after 9/11, while America and the world were grieving, Bush built a legal rationale for a dictatorship. Then he immediately started using it to avoid the law. This is, fundamentally, why this issue crossed political lines in Congress. If the president can ignore laws regulating surveillance and wiretapping, why is Congress bothering to debate reauthorizing certain provisions of the Patriot Act? Any debate over laws is predicated on the belief that the executive branch will follow the law. This is not a partisan issue between Democrats and Republicans; it's a president unilaterally overriding the Fourth Amendment, Congress and the Supreme Court. Unchecked presidential power has nothing to do with how much you either love or hate George W. Bush. You have to imagine this power in the hands of the person you most don't want to see as president, whether it be Dick Cheney or Hillary Rodham Clinton, Michael Moore or Ann Coulter. Laws are what give us security against the actions of the majority and the powerful. If we discard our constitutional protections against tyranny in an attempt to protect us from terrorism, we're all less safe as a result.

### Answers to: Credibility Add-on

#### [ ] Stronger checks on war powers boost our credibility abroad – that increases our capacity to deter conflict.

Waxman, Professor of Law, Columbia Law School,

(Matthew C, “The Constitutional Power to Threaten War,” 8-25-14, Yale Law Journal, vol. 123 (2014), 2013, PDF)

A second argument, this one advanced by some congressionalists, is that stronger legislative checks on presidential uses of force would improve deterrent and coercive strategies by making them more selective and credible. The most credible U.S. threats, this argument holds, are those that carry formal approval by Congress, which reflects strong public support and willingness to bear the costs of war; requiring express legislative backing to make good on threats might therefore be thought to enhance the potency of threats by encouraging the President to seek congressional authorization before acting.181 A frequently cited instance is President Eisenhower’s request (soon granted) for standing congressional authorization to use force in the Taiwan Straits crises of the mid- and late-1950s – an authorization he claimed at the time was important to bolstering the credibility of U.S. threats to protect Formosa from Chinese aggression.182 (Eisenhower did not go so far as to suggest that congressional authorization ought to be legally required, however.) “It was [Eisenhower’s] seasoned judgment … that a commitment the United States would have much greater impact on allies and enemies alike because it would represent the collective judgment of the President and Congress,” concludes Louis Fisher. “Single-handed actions taken by a President, without the support of Congress and the people, can threaten national prestige and undermine the presidency. Eisenhower’s position was sound then. It is sound now.”183 A critical assumption here is that legal requirements of congressional participation in decisions to use force filters out unpopular uses of force, the threats of which are unlikely to be credible and which, if unsuccessful, undermine the credibility of future U.S. threats.¶ A third view is that legal clarity is important to U.S. coercive and deterrent strategies; that ambiguity as to the President’s powers to use force undermines the credibility of threats. Michael Reisman observed, for example, in 1989: “Lack of clarity in the allocation of competence and the uncertain congressional role will sow uncertainty among those who depend on U.S. effectiveness for security and the maintenance of world order. Some reduction in U.S. credibility and diplomatic effectiveness may result.”184 Such stress on legal clarity is common among lawyers, who usually regard it as important to planning, whereas strategists tend to see possible value in “constructive ambiguity”, or deliberate fudging of drawn lines as a negotiating tactic or for domestic political purposes.185 A critical assumption here is that clarity of constitutional or statutory design with respect to decisions about force exerts significant effects on foreign perceptions of U.S. resolve to make good on threats, if not by affecting the substance of U.S. policy commitments with regard to force then by pointing foreign actors to the appropriate institution or process for reading them.

### Answers to: Credibility Add-on

#### [ ] War power authority is irrelevant – it’s not perceived internationally.

Sitaraman, Assistant Professor of Law, Vanderbilt Law School, 2014

(Ganesh, “Credibility and War Powers,” Harvard Law Review, January 2014, [www.harvardlawreview.org/issues/127/january14/forum\_1024.php#\_ftnref19](http://www.harvardlawreview.org/issues/127/january14/forum_1024.php#_ftnref19))

For all the talk of credibility, political scientists have offered devastating critiques of credibility arguments in the context of military threats. They have demonstrated not only that the concept is often deployed in incomplete and illogical ways but also that as a historical matter, a country’s “credibility” based on its reputation and past actions has little or no effect on the behavior of opponents in high-stakes international crises. In the crises in the run-up to World War I, in the Berlin crises of the late 1950s and early 1960s, and even in the crises leading to World War II, threats from countries that had previously backed down were not seen as less credible by their opponents. In some cases, the threats were even thought to be more credible. For constitutional lawyers, this research should be particularly troubling because credibility has migrated from foreign policy into the constitutional law of war powers. In a series of opinions, including on Somalia (1992), Haiti (2004), and Libya (2011), the Justice Department’s Office of Legal Counsel (OLC) has argued that the credibility of the United Nations Security Council is a “national interest” that can justify presidential authority to use military force without prior congressional authorization.4 This Essay argues that the credibility justification for the use of force should be removed from the constitutional law of presidential war powers. Incorporating credibility as one of the “national interests” that justify presidential use of force expands the President’s war powers significantly without a legitimate policy justification. I. Understanding Credibility As a justification for the use of military force, the preservation of credibility is ubiquitous in foreign policy. President Clinton thought that if the United States failed to uphold its commitments in Somalia after the Black Hawk Down incident, then “[o]ur own credibility with friends and allies would be severely damaged. Our leadership in world affairs would be undermined . . . .”5 President Reagan argued that if the United States failed to confront guerrillas in Central America, “our credibility would collapse.”6 Years earlier, President Truman said that defeat in Korea “would be an open invitation to new acts of aggression elsewhere.”7 For decades during the Cold War, credibility arguments were prominent in game theory analyses of deterrence, arms control, and U.S.-Soviet relations.8 Despite the importance of these theories, political scientists at the time acknowledged that they “know remarkably little” about credibility9 and had “neither theoretically grounded expectations nor solid evidence” of how behavior affects expectations of future action.10 More recently, political scientists have turned to serious study of credibility. These studies call into question the use of credibility arguments in the context of military threats. A. Theories of Credibility The credibility of a threat is “the perceived likelihood that the threat will be carried out if the conditions that are supposed to trigger it are met.”11 When people believe a threat will be carried out, it is credible; when they believe it is a bluff, the threat is not credible. Credibility is an audience’s perception. If the United States thinks its threats are credible, but opponents do not, then the threats are not credible. Credibility is also not universal. Different actors might assess the credibility of a threat differently — and different individuals within the same government might debate the credibility of a threat.12

### Perm (Congress and Executive should act together)

#### [ ] The perm solves best—oversight must involve all three branches

Balkin Professor of Constitutional Law at Yale, 2008

(Jack, “The Constitution in the National Surveillance State”, Minnesota Law Review, November 2008, <http://heinonline.org/HOL/Page?handle=hein.journals/mnlr93&div=4&g_sent=1&collection=journals>)

Oversight of executive branch officials may be the single most important goal in securing freedom in the National Surveillance State. Without appropriate checks and oversight mechanisms, executive officials will too easily slide into the bad tendencies that characterize authoritarian information states. They will increase secrecy, avoid accountability, cover up mistakes, and confuse their interest with the public interest. Recent events in the Bush administration suggest that legislative oversight increasingly plays only a limited role in checking the executive. Meaningful oversight is most likely to occur only when there is divided government. Even then the executive will resist sharing any information about its internal processes or about the legal justifications for its decisions. A vast number of different programs affect personal privacy and it is unrealistic to expect that Congress can supervise them all. National security often demands that only a small number of legislators know about particularly sensitive programs and how they operate, which makes it easy for the administration to co- opt them.79 The Bush administration's history demonstrates the many ways that Presidents can feign consultation with Congress without really doing so. 8 0 Judicial oversight need not require a traditional system of warrants. It could be a system of prior disclosure and explanation and subsequent regular reporting and minimization. This is especially important as surveillance practices shift from operations targeted at individual suspected persons to surveillance programs that do not begin with identified individuals and focus on matching and discovering patterns based on the analysis of large amounts of data and contact information.81 We need a set of procedures that translate the values of the Fourth Amendment (with its warrant requirement) and the Fifth Amendment's Due Process Clause8 2 into a new technological context. Currently, however, we exclude more and more executive action from judicial review on the twin grounds of secrecy and efficiency. The Bush administration's secret NSA program is one example; the explosion in the use of administrative warrants that require no judicial oversight is another.8 3 Yet an independent judiciary plays an important role in making sure that zealous officials do not overreach. If the executive seeks greater efficiency, this requires a corresponding duty of greater disclosure before the fact and reporting after the fact to determine whether its surveillance programs are targeting the right people or are being abused. Judges must also counter the executive's increasing use of secrecy and the state secrets privilege to avoid accountability for its actions. Executive officials have institutional incentives to label their operations as secret and beyond the reach of judicial scrutiny. Unless legislatures and courts can devise effective procedures for inspecting and evaluating secret programs, the Presidency will become a law unto itself. Given the limits of legislative and judicial oversight, oversight within the executive branch will prove especially crucial. Congress can design institutional structures that require the executive to police itself and make regular reports about its conduct. For example, if Congress wants to bolster legal protections against warrantless surveillance, it might create a cadre of informational ombudsmen within the executive branch- with the highest security clearances-whose job is to ensure that the government deploys information collection techniques legally and nonarbitrarily.8 4 Unfortunately, the Bush administration has made extreme claims of inherent presidential power that it says allow it to disregard oversight and reporting mechanisms.85 Rejecting those claims about presidential power will be crucial to securing the rule of law in the National Surveillance State.

### Answers to: Perm links to presidential powers net benefit

#### [ ] Legislative-Executive power isn’t zero-sum – it’s a rubber band – it can be exercised without changing the structure.

Rottinghaus, Assistant Prof of Poli Sci at the University of Houston, 2011

[Brandon tottinghaus, “The Presidency and Congress”, from New Directions in the American Presidency, ed. Lori Cox Han] page 96-97

Alexander Hamilton's edict for "energy" in the executive can creatively contradict the constitutional authority given to the legislative branch. A visible and powerful president necessarily detracts from a legislature whose job it is (at least on paper) to be the engine of legislative ingenuity. The Constitution sought to buttress ‘parchment barriers' by pitting ambition against ambition; and the principle means of doing that was the election of public officials at different times, by different people and for somewhat different reasons." 107 Although the powers of the president have grown immeasurably beyond what the framers envisioned and have surpassed Congress in terms of the ability to lead in the American system, the function of shared powers continues to shape the political process in America. To consider this relationship a pendulum (an analogy some have used108 to suggest the power balance swings from one branch to another) may overstate the zero-sum game of Washington politics-the truth is that legislative powers are shared, even if certain powers are exercised at certain times by specific institutions that perhaps encroach on the power of another branch. A pendulum analogy implies that the power shifts between the branches (potentially at regular, predictable intervals). This arrangement is false since, even during times when one branch appears to have more power than another, the truth is that the branches still rely on one another for shared policy-making power. In reality, the executive-legislative relationship is more like a rubber band, where it retains a fundamental shape but can be stretched to change as legislative and executive tools change and political events occur. So, for instance, in utilizing unilateral powers, presidents can stretch that part of the rubber band, even while members of Congress assert themselves on matters of foreign policy or the appointments process. Indeed, perpetuating the rubber band analogy, jointly understanding presidency- centered and Congress-centered variables is also shown to better account for variations in policy making.109 For instance, recent evidence suggests a resurgent Congress in the creation of foreign policy, a fact that seems at odds with the "two presidencies" thesis 110 or other literature that claims that Congress always defers to the president in foreign policy matters. 111 This supports the literature that Congress may not be involved in the formal aspects of foreign policy making but does play a role in the informal aspects.112 The evidence presented here also reveals that Congress has more say on when and how the president uses his unilateral powers and whom the president recommends for nomination and confirmation than was previously assumed.

### Executive Action Fails – Accountability

#### [ ] The executive cannot check itself – outside oversight is key to reduce surveillance.

Lee, Washington Post reporter, 2013

(Timothy, “Obama says the NSA has had plenty of oversight. Here’s why he’s wrong.” June 7, 2013, The Washington Post, [http://www.washingtonpost.com/blogs/wonkblog/wp/2013/06/07/obama-says-the-nsa-has-had-plenty-of-oversight-heres-why-hes-wrong/](http://www.washingtonpost.com/blogs/wonkblog/wp/2013/06/07/obama-says-the-nsa-has-had-plenty-of-oversight-heres-why-hes-wrong/NV))

President Obama was in San Jose on Friday to talk about the Affordable Care Act. But he took the opportunity to try to calm the furor over new revelations that his administration is presiding over unprecedented surveillance of telephone and digital communications. "These programs were originally authorized by Congress," President Obama said. "They have been repeatedly authorized by Congress. Bipartisan majorities have approved them. Congress is continually briefed on how these are conducted. There are a whole range of safeguards involved. And federal judges are overseeing the entire program throughout." Obama's comments make it sound like the programs are subject to rigorous and continuous oversight. But the simple fact that Congress is briefed and federal judges are involved doesn't mean either branch is actually able to serve as an effective check. The excessive secrecy surrounding these programs makes that unlikely. Take Congress. When the government has briefed members of Congress on its surveillance activities, it has often been in meetings where "aides were barred and note-taking was prohibited." It's impossible for Congress to provide effective oversight under those conditions. Members of Congress rely on staff to help them keep track of legislative details. They need independent experts to advise them on complex technical issues. And they need feedback from the constituents they ultimately represent. But the senators briefed on these programs couldn't speak about them. Sens. Ron Wyden (D-Ore.) and Mark Udall (D-Colo.) were reduced to spending years trying to hint at the existence of programs they weren't able to actually tell anyone about. Only now can anyone see what it is they were trying to tell us. Meanwhile, the 2008 FISA Amendments Act cut judges out of their traditional role of reviewing individual surveillance requests. Instead, it asks judges to approve broad categories of surveillance. The law gives judges little leeway to reject proposed surveillance programs, and in any event judges lack the expertise and resources to perform this quasi-legislative oversight role effectively. With both Congress and the courts effectively neutered, their traditional functions — defining the rules and making sure they're enforced — are now largely being performed inside the executive branch. In place of legal standards defined by Congress and enforced by an independent judge, we now have "minimization procedures" defined by some executive branch officials and applied by others. There's no opportunity for public debate about these rules and no independent oversight into whether the rules are being followed in individual cases. And there's [ample evidence](http://arstechnica.com/security/2008/03/progress-on-national-security-letters-has-been-slow/) that letting the executive branch police itself is a recipe for abuse.

### Executive Action Fails – Circumvention

#### [ ] Executive orders can be circumvented because surveillance practices are still secret – Congressional action is key.

Bendix and Quirk, 2015

(William Bendix and Paul J. Quirk, assistant professor of political science at Keene State College; Phil Lind Chair in U.S. Politics and Representation at the University of British Columbia, “Secrecy and negligence: How Congress lost control of domestic surveillance”, Issues in Governance Studies, March 2015, <http://www.brookings.edu/~/media/research/files/papers/2015/03/02-secrecy-negligence-congres-surveillance-bendix-quirk/ctibendixquirksecrecyv3.pdf>)

In enacting the USA PATRIOT Act just weeks after the 9/11 terrorist attacks, Congress sought to enhance investigations against specific, named persons suspected of terrorism. As voluminous documents leaked by whistleblower Edward Snowden have revealed, however, the president and the National Security Agency (NSA) have relied on that law to authorize the daily, ongoing capture of all U.S. communication records. These documents make clear that the Bush and Obama administrations ignored statutory constraints to authorize exceptionally broad intelligence-gathering programs. But from our review of legislative hearings and debates on the PATRIOT Act over the last five years, along with numerous declassified documents on surveillance, we find that unilateral action by the executive branch was only partly to blame for unrestrained domestic spying. After the relatively balanced and cautious provisions of the 2001 PATRIOT Act, Congress virtually absented itself from substantive decision making on surveillance. It failed to conduct serious oversight of intelligence agencies, ignored government violations of law, and worked harder to preserve the secrecy of surveillance practices than to control them. Even after the Obama administration made the essential facts about phone and email surveillance available in classified briefings to all members, Congress mostly ignored the information and debated the reauthorizations on the basis of demonstrably false factual premises. Until the Snowden revelations, only a handful of well-briefed and conscientious legislators—too few to be effective in the legislative process—understood the full extent of domestic intelligence gathering. We describe and explain Congress’s deliberative failure on phone and Internet surveillance policy. We show that along with a lack of consistent public concern for privacy, and the increasing tendency toward partisan gridlock, Congress’s institutional methods for dealing with secret surveillance programs have undermined its capacity to deliberate and act effectively with respect to those programs. Although the current political environment is hardly conducive to addressing such problems, we discuss long-term goals for institutional reform to enhance this capacity. We see no easy or decisive institutional fix. But without some structural change, the prospects look dim for maintaining significant limitations on investigatory intrusion in an era of overwhelming concern for security.

### Executive Action Fails – Rollback

#### [ ] Executive orders can be easily rolled back – they’re not effective at creating lasting change.

Bendix and Quirk, 2015

(William Bendix and Paul J. Quirk, assistant professor of political science at Keene State College; Phil Lind Chair in U.S. Politics and Representation at the University of British Columbia, “Secrecy and negligence: How Congress lost control of domestic surveillance”, Issues in Governance Studies, March 2015, <http://www.brookings.edu/~/media/research/files/papers/2015/03/02-secrecy-negligence-congres-surveillance-bendix-quirk/ctibendixquirksecrecyv3.pdf>)

<http://www.brookings.edu/~/media/research/files/papers/2015/03/02-secrecy-negligence-congres-surveillance-bendix-quirk/ctibendixquirksecrecyv3.pdf>)

For the immediate future, however, Congress appears to have gone out of the business of determining policy for antiterrorism surveillance. In the near term, the best hope for privacy interests is for President Obama to make good on his post-Snowden pledge, repeated in his 2015 State of the Union Address, to reform surveillance programs in order to instill “public confidence...that the privacy of ordinary people is not being violated.” He promised to work with Congress on the issue. If Congress is not capable of acting, the executive branch can impose its own constraints on surveillance practices.57 But the maintenance of self-imposed executive-branch constraints would depend entirely on the strength of the administration’s commitment—and, in two years’ time, on the disposition of the next president. Because of the president’s central responsibility for national security, the presidency is hardly a reliable institutional champion for privacy interests. If over the long run surveillance practices are to afford significant protection to privacy interests, Congress will need to overcome its partisan gridlock and strengthen the institutional framework for surveillance policymaking. We suggest two long-term goals. First, Congress should seek some means of enhancing its capacity for oversight and policymaking on secret surveillance practices. Some reformers have called for abolishing or prohibiting any secret laws or interpretations that control investigations. In his 2011 speech mentioned above, Senator Wyden acknowledged that surveillance activities are necessarily secret.58 He insisted, however, that the policies governing those activities should be debated and decided openly, through normal democratic processes. He argued that secret laws, or secretly sanctioned interpretations of laws, are incompatible with democracy.

### Executive Action Fails – Rollback

#### [ ] Future presidents can easily roll back previous executive orders – it’s likely that limits on surveillance will be rolled back.

Friedersdorfa, 2013

(Conor, staff writer at The Atlantic where he focuses on politics and national affairs, Does Obama Really Believe He Can Limit the Next President's Power?, The Atlantic, May 28 2013, <http://www.theatlantic.com/politics/archive/2013/05/does-obama-really-believe-he-can-limit-the-next-presidents-power/276279/>)

So unlike Hume, I don't think it's "stop me before I kill again," so much as, "I trust myself with this power more than anyone. You won't always be so lucky as to have me, but don't worry, I'm leaving instructions."¶Will anyone follow them? That's what I don't understand. Why does Obama seem to think his successors will constrain themselves within whatever limits he sets? Won't they just set their own limits? Won't those limits be very different? What would Chris Christie do in the White House? I have no idea, but I'm guessing that preserving the decisionmaking framework Obama established isn't what he'd do.¶ Does anyone think Hilary Clinton would preserve it?¶ Obama doesn't seem to realize that his legacy won't be shaped by any perspicacious limits he places on the executive branch, if he ever gets around to placing any on it. The next president can just undo those "self-imposed" limits with the same wave of a hand that Obama uses to create them. His influence in the realm of executive power will be to expand it. By 2016 we'll be four terms deep in major policy decisions being driven by secret memos from the Office of Legal Counsel. The White House will have a kill list, and if the next president wants to add names to it using standards twice as lax as Obama's, he or she can do it, in secret, per his precedent.¶Some new John Brennan-like figure, with different values and a different personality, will serve as Moral Rectitude Czar.¶ Even ending torture was done by executive order. The folks guilty of perpetrating it weren't punished. Congress wasn't asked to act. (There was an ambitious domestic agenda to focus on!) So who knows what we'll get next, save for a new president who witnessed all the previously unthinkable things post-9/11 presidents got away with so long as they invoked fighting "terror."¶ The fact that every new president is likely to be a power-seeking egomaniac seems like too obvious a flaw in Obama's plan for a smart guy like him not to see it. So what gives? Is all the talk of limiting the executive branch just talk? But why even talk at this point, if so? He isn't running again. Yet if he really does think his office wields too much power, why is he putting in place safeguards the next president can and probably will undo instead of zealously trying to get Congress to act? Yet he does seem to be concerned. Here's Peter Baker reporting in The New York Times:¶ For nearly four years, the president had waged a relentless war from the skies against Al Qaeda and its allies, and he trusted that he had found what he considered a reasonable balance even if his critics did not see it that way. But now, he told his aides, he wanted to institutionalize what in effect had been an ad hoc war, effectively shaping the parameters for years to come "whether he was re-elected or somebody else became president," as one aide said.¶ Ultimately, he would decide to write a new playbook that would scale back the use of drones, target only those who really threatened the United States, eventually get the C.I.A. out of the targeted killing business and, more generally, begin moving the United States past the "perpetual war" it had waged since Sept. 11, 2001. Whether the policy shifts will actually accomplish that remains to be seen, given vague language and compromises forced by internal debate, but they represent an effort to set the rules even after he leaves office. ¶ "We've got this technology, and we're not going to be the only ones to use it," said a senior White House official who, like others involved, declined to be identified talking about internal deliberations. "We have to set standards so it doesn't get abused in the future."¶ There's that same obvious flaw, but everyone seems oblivious to it. The standards you're setting? The next president can just change them. In secret, even! That's the problem with extreme executive power: It is capricious, prone to abuse, and difficult to meaningfully check. Does Obama think the next man or woman will just behold the wisdom of his approach and embrace it? That error, unthinkable as it seems, would not be without precedent for this president.

### Executive Action Fails - Transparency

#### [ ] Transparency is key to accountable use of surveillance tools – the secretive nature of executive action means it can’t solve.

Finkelstein, professor of law at Penn, 2013

(Prof Law Penn. “Secrecy, Targeted Killing and the Rule of Law” <https://www.law.upenn.edu/live/files/1796-finkelstein-sovereignty-abstract>)

The upshot of the foregoing trends is the collective endorsement of three significant principles: 1. The executive branch has largely virtually unlimited discretion to make life or death decisions with regard to suspected enemies of the state in time of heightened national security threat, 2. The executive branch has unlimited discretion to declare sensitive documents secret, with virtually no review or oversight, and 3. Article III courts are committed to a judicial philosophy that declares both 1) and 2) unreviewable. While each individual proposition may seem reasonable on its face, the trio of principles, taken together, poses a significant threat to the rule of law. The seeds of this triumvirate were arguably sown many years ago – most notably with the Bush Administration’s decision to label al-Qu’aida affiliates “unlawful combatants” and its asymmetric conception of the rights of such persons relative to traditional combatants – the internal logic of this policy is only now being clearly felt. What the public is beginning to observe is that in our haste to secure our nation from terrorist threat, the logic of unlawful combatancy may have worked a permanent transformation in the traditional safeguards for the protection of personal liberty of which Americans have historically been so proud. In his confirmation hearing on February 28, John Brennan noted the public interest in the “thresholds, criteria, processes, procedures, approvals and reviews” for drone strikes and he claimed that “our system of government and our commitment to transparency demand nothing less” than a public discussion of those criteria. This is a lofty ideal, but we cannot meaningfully debate what we don’t know. Of course Brennan understands this, as shown by his call for codifying his own procedures for targeting decisions. This would be crucial to ensure that our practices conform to the rule of law and would impose self-restraint on the Executive’s decisionmaking capacity over the awesome power of life and death. But there is a catch: just as the Bush Administration went through the exercise of articulating rules for the use of enhanced interrogation techniques, but kept such rules secret, so the Obama Administration has engaged in an elaborate exercise of private law-making. Articulating limits on discretion will do little to protect the rule of law if the rules and standards that establish those limits remain clandestine. The necessary protection can only come from the articulation of publicly available rules and standards which are then subject to public scrutiny and debate.